Appendix "C"

Since the petitioners are not presently aggrieved by the portion of the order which they ask us to modify, their petition for review will be dismissed.[6]

So ordered.

APPENDIX C

EXCERPTS * FROM OPINION OF THE FEDERAL POWER COMMISSION, *IN THE MATTER OF OHIO FUEL GAS COMPANY*, DOCKET No. G-2281.

Exceptions to the initial decision of the Presiding Examiner were filed by Ohio Fuel, The Cincinnati Gas & Electric Company, and the City of Cincinnati (referred to herein collectively as Cincinnati) and The Dayton Power and Light Company (Dayton). The exceptions raise several issues for our determination, the most important of which is the question of rate form. We also determine the question of the proper rates for the future and for the refund period, including the rate of return for that period. Additionally, we resolve questions as to the proper classification of cost between the demand and commodity components as they are associated with (a) gas purchased from Texas Eastern Transmission Corp ation, (b) LPG Plant—Depreciation, Return and Taxes, and (c) Natural Gas Production Plant—Depreciation, Return and Taxes. Finally, in arriving at a cost of service, we resolve herein two adjustments to Ohio Fuel's cost of service which are questioned by Dayton.

After contesting Ohio Fuel's rate filing on its merits over a period of two and one-half years, Dayton, on June 1,

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[6] Cf. Memphis Light, Gas & Water Division v. Federal Power Comm., 1957, 99 U. S. App. D. C. —, 243 F. (2d) 628.

* Opinion printed in full, R. 1123.

1956, filed a motion to dismiss and reject Ohio Fuel's filing so far as it relates to a change in rate form. Dayton now claims that the Commission has no jurisdiction to entertain the filing, basing its contention on the theory that the filing constitutes a unilateral change in its contract with Ohio Fuel forbidden by the recent decisions in *United Gas Pipe Line Co.* v. *Mobile Gas Service Corp.*, 350 U. S. 332, and *F. P. C.* v. *Sierra Pacific Power Co.*, 350 U. S. 348. Ohio Fuel, by answer filed on June 11, 1956, opposes the motion principally on the ground that the billing demand provision proposed to be changed in its filing had previously, in itself, altered and superseded the billing demand provision in the original contract now relied upon by Dayton. Ohio Fuel therefore contends that the billing demand provision in the contract is no longer applicable.

In the circumstances of these proceedings we deem it unnecessary for the purposes of our decision herein to decide between the foregoing opposing contentions. It is our opinion that the *Sierra Pacific* and *Mobile* decisions do not require us, at this stage of the proceedings where we have a complete record before us, to undo the work of the last two and one-half years. Significantly, the Supreme Court modified the instructions of the Court of Appeals in the *Sierra Pacific* case which would have required the Commission to begin anew with a proceeding under Section 206 of the Federal Power Act (comparable to Section 5 of the Natural Gas Act). The Supreme Court directed that (350 U. S. at 353):

> If the proceedings here satisfied in substance the requirements of § 206(a), it would seem immaterial that the investigation was begun as one into the reasonableness of the proposed rate rather than the existing contract rate.

Appendix "C"

Here, the proceedings satisfy, in substance, the requirements of Section 5 of the Natural Gas Act. As we show below, continued billing by Ohio Fuel under the average demand basis heretofore used is no longer in the public interest. Since our order approves the CD rate form for the future only, no change in rate form is made effective prior to the date of issuance of our order.

We have given careful consideration to each of the issues presented to us by the exceptions of the various parties and by the motion to dismiss. We have decided that, for the reasons hereinafter stated, the decision of the Presiding Examiner in its major aspects should be reversed and the motion should be denied. The extent of our reversal of the Presiding Examiner's decision is clear from our findings and conclusions which follow.

RATE FORM

The Presiding Examiner rejected Ohio Fuel's proposal to make the CD rate form applicable to its jurisdictional customers.[2] He apparently felt bound by our previous decision in Opinion No. 273, where we rejected the use of the CD rate form by Ohio Fuel. He found the CD rate form to be unjust and unreasonable even though by his own statement the record contains "facts and expert opinions extant upon which a different result could be based." Those facts, and the conclusions we draw from them, lead us to reverse the Presiding Examiner and to find that the use of CD

[2] Pursuant to Ohio Fuel's proposal, jurisdictional customers taking less than 5,000 Mcf on peak day are eligible to purchase under the Small General Service (SGS) Rate Schedule containing a straight commodity rate. Twenty of the twenty-five jurisdictional customers are eligible for service under this rate schedule instead of under the CDS-1 Rate Schedule with its contract demand rate form. Our findings with respect to the rate level of the SGS Rate Schedule are set forth in a later portion of this order.

rate form for the future is just and reasonable under the circumstances of this case.

We have had recent occasion *In the Matter of United Fuel Gas Company, et al.,* Docket No. G-2451, *et al.,* order issued May 11, 1956, to pass upon application of the CD rate form to the sales of natural gas by United Fuel and Central Kentucky to their distribution company customers. The significant factors leading to our approval of the CD rate forms as applied to the jurisdictional sales of these affiliates of Ohio Fuel in the Columbia Gas System are also present in this case.

The primary factor, as disclosed in the record, which influences our decision is the effect of the tremendous increase in the space-heating load by ultimate consumers purchasing gas from the distribution company customers of Ohio Fuel. As an example, the record shows that the space-heating saturation on Dayton's system was approximately 77% in 1955, representing 110,800 residential customers. This compares with a 21% saturation in 1946. The peak-day requirements of Dayton, as shown by actual experience and as projected into the future, illustrate a comparable increase. The same condition pertains to the rate of growth of the space-heating load of other wholesale customers of Ohio Fuel.

It is characteristic of this space-heating load to fluctuate widely with changing weather conditions. These fluctuations are not only winter peaks but, more importantly, year-to-year variations in peak loads. When demand revenues accruing to Ohio Fuel are made dependent upon actual purchases by the wholesale customers which, in turn, are dependent upon the weather, it is clear that Ohio Fuel will be subjected to a "feast or famine" recovery of costs collected through demand charges. As the space-heating load

with consequent high-peak requirement increases, the year-to-year fluctuations in recovery of costs collected through demand charges would become more accentuated by the weather conditions. In our judgment, a rate form which does not recognize this situation and bring a measure of stability in recovery of those costs collected through demand charges is no longer just and reasonable.

The CD rate form, as proposed by Ohio Fuel and which we find just and reasonable under the circumstances of this case, will tend to stabilize recovery of demand charges collected from the distribution company customers.[3] Additionally, the CD rate form, with its 90% ratchet provision, will encourage control of the peak demands by distribution company customers either through construction and use of peak-shaving facilities or through use of other means available to them. Since distribution company customers will be obligated to pay for 90% of their contract demands over the period of the contract term, they will be encouraged not only to keep their load factors high, but also to avoid year-to-year fluctuations in requirements from Ohio Fuel.[4] To the extent economical, the customers will stabilize peak demands from Ohio Fuel and Ohio Fuel will not be required to absorb, through varying demand revenues, the entire effect of year-to-year weather fluctuations.[5] At the same time, customer companies are afforded considerable protection in the provision of the tariff permitting them to reduce their contract demands in two successive 5% stages

[3] It should be noted that although only about 26% (by revenue) of Ohio Fuel's sales are made at wholesale, they are, nevertheless, significant. See Appendices A and B.

[4] A CD rate with a short-term commitment, such as a one-year contract, would not provide a long-term stability in demand revenues.

[5] In time the reduction of the year-to-year fluctuations in Ohio Fuel's demand revenues should reflect a salutary effect on future financing by the Columbia Gas System which, in turn, will also redound to the benefit of Ohio Fuel's wholesale customers.

as a matter of right. The tariff further provides that the contract quantity can be reduced by additional amounts provided the capacity so released can be otherwise used.

Further, the uniform application of CD rate form will tend to reduce discrimination among customers. A rate form geared to average demand would work to the advantage of the low-load factor customer. Under the fluctuating weather conditions shown in this record to exist, we can anticipate that without the control afforded by the CD rate form this discrimination would be aggravated in the future. . . .

. . . Consistent with our decision herein, customer companies should be permitted to negotiate new contract quantities under the contract demand rate form.

For the reasons stated above and based upon consideration of the substantial evidence of the entire record, the Commission further *finds:*

EXCERPTS * FROM ORDER OF FEDERAL POWER COMMISSION, DENYING APPLICATION FOR REHEARING, *IN THE MATTER OF OHIO FUEL GAS COMPANY,* Docket No. G-2281.

(4) Continued billing by Ohio Fuel under the rate form previously prescribed does not give sufficient firmness to the demand revenues nor provide long-term commitments by the customers, both of which are essential for continued financial stability of Ohio Fuel; nor does such billing encourage use of peak shaving by the customers. Therefore, further use of this rate form, prospective from the July 1956 billing month, would not be in the public interest.

(9) Ohio Fuel should file revised tariff sheets reflecting rates and charges, to be effective commencing with

* Order printed in full, R. 1161.

the July 1956 billing month, of $1.56 per Mcf of demand and 32.45¢ per Mcf of commodity, based upon a contract demand rate form including the modifications proposed by Ohio Fuel in Exhibit No. 38 to this proceeding.

In its request for rehearing, Cincinnati reiterates its claim that the long-term commitment contained in the CD rate form approved by our June 29, 1956, order extends to the electric utility business of Cincinnati Gas & Electric Company. Such a commitment, it is argued, forces unregulated business to subsidize regulated business contrary to the principle that the rates for a regulated business should be based upon the cost of service of that business. What Cincinnati wants, however, is something quite different.[2] It asks for a guarantee that its payments for gas under the CD rate need be paid only from revenues received from its gas business. Cincinnati would extend this guarantee even to limit a court judgment so that only the assets of Cincinnati Gas & Electric Company's gas business would stand as security for the payment of gas. Aside from its doubtful validity, such a limitation of liability is contrary to the public interest.

Furthermore, should the rate level or rate form prescribed in our order become unreasonable at some future time because of a change in economic or technological con-

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[2] Clearly, the fact that Cincinnati Gas & Electric Company may involve some of its electric utility assets in the purchase of gas is irrelevant to the principle that nonjurisdictional business should not be required to subsidize jurisdictional business. The principle requires a proper allocation between Ohio Fuel's jurisdictional and nonjurisdictional business so that the rates charged by Ohio Fuel to its jurisdictional customers will return only the cost of rendering service to them. The record shows the scrupulous care we have taken to assure a proper allocation in this proceeding and Cincinnati does not take issue with any item of our allocation.

ditions, a remedy is open through appropriate procedure under the Natural Gas Act. . . .

We have considered the other contentions raised by the applications for rehearing, including Cincinnati's objection to the long-term billing commitment of the CD rate form, the effect of the *Mobile*[3] and *Sierra Pacific*[4] decisions, the application o fthe CD rate form to rates for the refund period, and the bare allegations of the City of Lancaster. We find that they are not sufficiently material to warrant further discussion here, or that they have been fully considered and correctly disposed of in our order issued June 29, 1956, in this proceeding.[5] Accordingly, in the light of the entire record and upon reconsideration of all the issues presented, we again conclude that our order issued June 29, 1956, correctly disposed of all material issues of fact, law and discretion presented, and that the relevant evidence provides substantial support for our determination.

The Commission *finds:*

(1) The applications for rehearing of our order issued in this proceeding on June 29, 1956, set forth no facts and no principles of law which either were not fully

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[3] *United Gas Pipe Line Co.* v. *Mobile Gas Service Corp.*, 350 U. S. 332.

[4] *Federal Power Commission* v. *Sierra Pacific Power Co.*, 350 U. S. 348.

[5] In its application for rehearing, Cincinnati suggests that the Commission is required by Section 8(b) of the Administrative Procedure Act to make a ruling or finding upon each of its proposals as an intervening party. That the Commission is not bound to specify, in detail, its reasoning and rulings upon each proposal of every party to the administrative proceedings is clear so long as the basic findings and sufficient subsidiary findings are made which unmistakably inform the parties of the Commission's rulings and the manner in which they were arrived at. *National Coal Association* v. *Federal Power Commission*, 191 F. 2d 462; *N. L. R. B.* v. *State Center Warehouse & Cold Storage Co.*, 193 F. 2d 156. There can be no doubt as to our ruling on each material issue in this proceeding and the reasons which have led us to those conclusions.

considered by the Commission when it adopted said order or which, having now been considered, warrant any change in or modification of such order.

(2) For the reasons set forth above, the motion for clarification filed by Dayton on July 12, 1956, should be dismissed and the motion for stay filed by Cincinnati with its application for rehearing on July 30, 1956, should be denied.

The Commission *orders:*

(A) The motion for clarification filed by Dayton on July 12, 1956. is hereby dismissed and the motion for stay filed by Cincinnati on July 30, 1956, is hereby denied.

(B) The applications for rehearing of our order issued June 29, 1956, in this docket, filed by the City of Lancaster, Ohio, and Cincinnati, are hereby denied.